

MASTER USE AGREEMENT

THIS MASTER USE AGREEMENT (herein "Agreement") is made and entered into this 23 day of April, 1998 by and between Theatre Live!, a Minnesota non-profit corporation with its offices at 36 South Ninth Street, Minneapolis, MN 55402 (herein "TL"), and the Minneapolis Community Development Agency, a body corporate and politic (herein "MCDA").

In consideration of the mutual covenants and conditions set forth below, and other good and valuable consideration, the MCDA hereby agrees to permit the use of the State and Orpheum Theatres, Minneapolis, Minnesota (the "Theatres"), under the terms and conditions hereinafter set forth.

I. PURPOSE

TL intends to sponsor and present a Broadway Subscription Series at the Theatres during the period July 1, 1999 to June 30, 2002 and any extensions under Paragraph 2.2 of this Agreement. TL will use the Theatres for the sole purpose of presenting Broadway Theatre (as defined below), and for no other purpose. The use by TL shall be in accordance with all the laws, ordinances, rules and regulations of appropriate governmental bodies having jurisdiction.

II. TERM OF AGREEMENT

2.1 Term. Subject to Section 2.2 below, the MCDA agrees to permit TL to use the State and/or Orpheum Theatres for the period from July 1, 1999 to June 30, 2002 (herein "the Term"). The Term shall consist of the first season (herein "First Season"), running from July 1, 1999 to June 30, 2000, the second season (herein "Second Season"), running from July 1, 2000 until June 30, 2001, and the third season (herein "Third Season"), running from July 1, 2001 to June 30, 2002. During the First, Second and Third Seasons, TL shall present at least eighty (80) individual performances during each Season (not including dress rehearsals or non-ticketed previews) of "Broadway Theatre" through a "Broadway Subscription Series" (as defined below).

2.2 Right to Extend. Notwithstanding any other provision contained in this Agreement, and in addition to other rights of the MCDA hereunder, the MCDA shall have the right to extend this Agreement for a Fourth Season (July 1, 2002 through June 30, 2003) by providing written notice to TL of such extension by no later than July 5, 2000. The MCDA shall in addition have the right to extend this Agreement for a Fifth Season (July 1, 2003 through June 30, 2004) by providing written notice to TL of such extension by no later than July 5, 2001. If this Agreement is extended, then during the Fourth and Fifth Seasons, TL shall present at least eighty (80) individual performances during each Season (not including dress rehearsals or non-ticketed previews) of "Broadway Theatre" through a "Broadway Subscription Series" (as defined below).

Notwithstanding the foregoing, MCDA may, on a case by case basis, approve Use Agreements for TL presentations occurring beyond the Term.

III. LIMITED EXCLUSIVITY; RIGHT OF FIRST REFUSAL

3.1 Rights to Presentation and Definition of Broadway Subscription Series. During the Term and any extensions, TL will have the exclusive right to present a "Broadway Subscription Series" (as defined below) at the State and Orpheum Theatres. For purposes hereof, a "Broadway Subscription Series" shall mean any two (2) or more shows of "Broadway Theatre" which are packaged and marketed as a subscription series

3.2 Definition of Broadway Theatre. For the purposes of this Agreement, the term "Broadway Theatre" shall mean any musical production or dramatic play, whether or not such production has a story line, mounted for touring and customarily, but not exclusively, performing an eight (8) show Broadway week for one or more weeks. The national tours of major foreign theatre companies, including, but not limited to the Royal National Theatre of Great Britain, The Royal Shakespeare Company, and The Stratford Theatre Festival shall fall under the definition of "Broadway Theatre." In the case of productions engaging Broadway stars, one-person shows, musical revues, or concerts utilizing substantial Broadway materials, the parties shall in good faith make a mutual determination as to whether the production is, in fact, "Broadway Theatre" rather than a concert or other attraction. Among the criteria to be used in making this mutual determination are:

- (1) Whether the production is booked by a booking agency which works primarily with Broadway attractions (e.g. The Booking Office, CAMI), or primarily with concert attractions (e.g. William Morris, APA ICM);
- (2) Whether the production is currently being routed primarily to presenters or to concert promoters; and

Whether the Broadway connection to the production is emphasized (e.g. "The Music of Andrew Lloyd Weber").

In the event that the parties cannot reach agreement as to the proper characterization of a particular production, the determination shall be submitted to arbitration in accordance with Section 13.17 below.

If it is determined by the parties, or by arbitration, that the production is a concert attraction and not Broadway Theatre, TL may book the production either as a part of a series, or as an "extra," however TL will have no right of first refusal over the production as set forth in Section 3.3 below. The non-Broadway Theatre production shall

be credited towards the number of productions required to reach the Performance Credit levels set forth in Section 4.2 below at the rate of 1/8 week per performance. The non-Broadway Theatre production, however, will not be eligible to receive Performance Credits.

The Use Fees charged to TL for non-Broadway Theatre attractions shall be set at the Theatres' normal rates as set forth in the "rate sheets" produced by the Theatre Manager from time to time and approved by the MCDA in accordance with the Management Agreement for the Theatres between the MCDA and the Theatre Manager.

3.3 Right of First Refusal. Unless TL fails to present a minimum of ten (10) weeks of Broadway Theatre during the First through Third Seasons, and during any extensions of the Term, TL shall have a right of First Refusal ("Right of First Refusal") to present Broadway Theatre at the State and Orpheum Theatres and shall have the right to reserve dates for its Broadway Subscription Series prior to other potential users of the Theatres until the earlier of the Season announcement or February 1 prior to the beginning of the next Season. In the event that a third party wishes to present non-Subscription Series Broadway Theatre at either of the Theatres, the Right of First Refusal process will be as follows:

- (1) The third party shall submit to the Theatre Manager written notice (the "Written Notice") of its intent to present a specific attraction on a specific date or dates. The date(s), to the extent they are then available, shall be held for the third party, but per the Theatres' written Challenge Policy, the dates are a valid hold only for the specific production being proposed.
- (2) The Theatre Manager, within forty-eight (48) hours of the receipt of the written notice, shall submit copies of the notice to both the Project Manager at the MCDA, and to TL.
- (3) TL shall have seven (7) calendar days after receipt of the Written Notice to negotiate with the producer or booking agent for the proposed production. If TL, within the seven (7) day period, presents an executed deal memo or other written confirmation of its right to present the proposed production to the Theatre Manager, the dates on hold will become a TL hold.
- (4) If TL does not submit an executed deal memo or other written confirmation of its right to present a proposed production to Theatre Manager within the seven (7) day period, the hold for that production will be maintained subject to the Theatres' Hold Placement and Challenge Policy, and either TL or the third party may thereafter secure first hold status by submitting evidence that it has the right to present the proposed production.

- (5) Once either TL or the third party secures first hold status for the proposed production, the hold will continue to be subject to the Theatres' Hold Placement and Challenge Policy (i.e. if the dates are challenged, an executed Use Agreement and deposit will be necessary in order to secure the hold(s)) as may from time to time be amended.

3.4 Quality of Productions. TL recognizes that it is the desire of MCDA to ensure that only the highest quality shows are presented at the Theatres as part of the Broadway Subscription Series. To that end, TL agrees that, during the Term or any extensions of the Term, it will present only union-affiliated productions of Broadway Theatre at the Theatres. In the event that a touring production is not affiliated with a union, TL may engage the production if:

(1) There is no union-represented touring production of the proposed presentation; and

(2) The MCDA Theatre Coordinating Committee determines that the production is of sufficiently high quality and that the interests of the public are best served by permitting the presentation.

3.5 No Representation. TL covenants and agrees that at no time shall it hold itself out as an agent, owner, operator or manager of either of the Theatres.

IV. USE FEES, HOUSE COSTS AND LETTER OF CREDIT

4.1 Contracts for Individual Productions. TL and the MCDA shall enter into separate use agreements ("Use Agreements") for each production presented by TL. All such Use Agreements will first be approved by Jujamcyn, and then be submitted by Theatre Manager to the MCDA Project Manager for approval prior to the first performance of the production.

4.2 Use Fees. TL shall pay for the use of the State and Orpheum Theatres weekly use fees ("Use Fees") based upon the number of weeks per Season that TL presents Broadway Theatre as follows:

FIRST THROUGH THIRD SEASONS

Wks/ Season	<u>STATE THEATRE</u>			<u>ORPHEUM THEATRE</u>		
	Base Use Fee	Perf Cr per Wk	Effective Use Fee	Base Use Fee	Perf Cr Wk	Effective Use Fee
1-11	\$24,500	\$ -00-	\$24,500	\$32,500	\$ -00-	\$32,500
12-13	24,500	4,000	20,500	32,500	6,000	26,500
14+	24,500	6,000	18,500	32,500	8,000	24,500

FOURTH AND FIFTH SEASONS

1-11	\$26,500	\$ -00-	\$26,500	\$34,500	\$-00-	\$34,500
12-13	26,500	5,000	21,500	34,500	7,000	27,500
14+	26,500	7,000	19,500	34,500	9,000	25,500

The Base Use Fee will be paid for all weeks of each Season and, within thirty days after the end of each Season, the MCDA will remit to TL any Performance Credit due. Prior to the payment of the Performance Credits to TL, the MCDA will determine whether any payments are due from TL under that certain Guarantee between the MCDA and TL dated August 24, 1995 (the "Guarantee"), relating to the acquisition of the TurboSound system. In the event that any obligations of TL remain outstanding at such time, the MCDA may reduce the amount of the Performance Credit payment by the amount of such outstanding obligations. At its option, TL may secure its obligation under the Guarantee by providing to the MCDA a Letter of Credit in the amount of the then outstanding balance under the Guarantee. The Performance Credit shall be determined in the following manner:

- Step 1 Total the number of full and partial performance weeks for which the full or partial Base Use Fee has been paid for either Theatre. Partial weeks shall be computed on the basis of an eight-performance week.
- Step 2 Rounding down to the nearest full week, determine the applicable line in Section 4.2(a) or (b) under the column Weeks Per Season.
- Step 3. For each Theatre, multiply the amount shown on that line under the column Perf Cr Per Week by the number of full and partial performance weeks of Base Use Fee paid for that Theatre as calculated in Step 1. above.
- Step 4 The total use fee reduction shall be the sum of the products of Step 3 above.

In no event shall any Performance Credit be payable with respect to performances for which ticket receipts are advanced pursuant to Section 5.1 below unless such advances are at all times 100% secured by the Letter of Credit or other security acceptable to the MCDA in its sole discretion. In addition, any performances and performance weeks relating to shows for which ticket receipts are advanced and not fully collateralized shall not be counted in calculating the Weeks Per Season above for performance credit purposes, although such performances and performance weeks shall not be disqualified from constituting Broadway Theatre for purposes of Section 3.3 above. Nothing herein shall be construed as implying that the MCDA has any obligation at any time to advance ticket receipts unless such advances are fully collateralized as set forth herein.

The Use Fees above include those costs associated with the "strip and restore" of the Theatres. In no case shall TL's Use Fee per week at the Orpheum and/or State Theatres be more than the Use Fee paid by any other commercial theatrical presenter as defined under Section 3.2, Definition of Broadway Theatre.

4.3 Guaranteed Base Use Fees. Each individual Use Agreement shall provide that, except in the case of default by the MCDA and subject to the provisions of Section 4.6 below, the Base Use Fee shall be paid for the number of weeks (or portions thereof) for which the Theatres are reserved, irrespective of whether TL actually presents all performances.

4.4 Use Fees for Non-Performance Weeks. For weeks or portions of weeks provided by the MCDA to TL for Take-in, Take-out, rehearsals, or any other non-performance use, the Use Fee for each such week shall be the pro-rated portion of 50% of the otherwise applicable weekly Base Use Fee or such other amount as may be approved by the MCDA Theatre Coordinating Committee.

4.5 Base Letter of Credit. By no later than the date this Agreement is executed, TL shall provide to the MCDA a letter of credit in a form reasonably acceptable to the MCDA (the "Base Letter of Credit") in an amount equal to \$250,000 (the "Base Letter of Credit Amount"). Said Letter of Credit shall be maintained with the MCDA at all times during the First, Second, and Third Seasons and any extensions of the Term, and may at all such times be drawn upon by the MCDA upon presentation to the issuing bank of a certificate (a "Draw Certificate") signed by a designated representative or agent of the MCDA to the effect that:

- (a) The expiry date is earlier than July 31, 2002 (or thirty days following the end of any extension of the Term and the Letter of Credit has not been renewed by the date thirty (30) days prior to the stated expiry date;
- (b) TL has failed to pay guaranteed Base Use Fees in accordance with Section 4.3 of the Master Use Agreement;
- (c) TL has failed to compensate the MCDA for canceled performances as set forth in Section 4.6 of the Master Use Agreement;
- (d) TL has failed to pay House Costs as required by Section 4.7 of the Master Use Agreement;
- (e) TL has failed to remit to the MCDA ticket proceeds for a canceled performance in accordance with Section 5.1 of the Master Use Agreement;

- (f) The MCDA is entitled to draw on the Letter of Credit for damages incurred pursuant to Section 5.5 of the Master Use Agreement;
- (g) The MCDA is entitled to draw upon the Letter of Credit pursuant to Section 10.2 of the Master Use Agreement; or
- (h) The MCDA is entitled to draw upon the Letter of Credit pursuant to Section 12.2 of the Master Use Agreement.

Each Draw Certificate shall state the amount to be drawn under the foregoing provisions. The MCDA may submit one or more Draw Certificates from time to time. MCDA agrees that all draws under the Letter of Credit must be made in good faith. In the event it is shown that the MCDA has improperly made a draw under the Letter of Credit, the MCDA shall immediately reimburse TL for the amount drawn, together with the interest thereon and all reasonable fees, costs and attorney's fees incurred by TL in demonstrating the impropriety of such draw.

The obligation of TL to provide the Letter of Credit under this Agreement may be satisfied through either (i) one or more letters of credit or (ii) such other security as may be acceptable to the MCDA in its sole discretion. MCDA agrees that it shall not submit a draw under the Letter of Credit pursuant to Subsections 4.5(a), (b) or (c) above without first having provided TL with five (5) business days prior written notice.

4.6 Compensation for Failure to Use Scheduled Performance Dates. Should the dates for any Broadway Subscription Series performance date detailed in an individual Use Agreement ("scheduled use") not be used by TL (except as provided in Paragraph XI of this Agreement), the following provisions shall apply:

- (a) TL agrees to release dates which have been reserved by TL for any use back to MCDA as soon as it is known by TL that such dates will not be used.
- (b) TL may cancel any scheduled use of the Theatres not later than six (6) months in advance of the use without penalty.
- (c) If TL cancels any scheduled use less than six (6) months before the date but more than twelve (12) weeks before the use, TL shall be liable to MCDA for fifty percent (50%) of the total Base Use Fee for the canceled use as shown in Section 4.2 for the affected space and time of use. In each case, direct expense incurred by the MCDA will also be due and payable.
- (d) If TL cancels any scheduled use less than twelve (12) weeks prior to the scheduled use, TL shall be liable to the MCDA for the full amount

of the Use Fee due under Section 4.2 with respect to such use, together with all direct expense incurred by the MCDA.

(e) Notwithstanding the above, if a scheduled use is moved to another period within a given Broadway Season, and none of its performances are canceled as a part of this move, and this move occurs less than six (6) months but more than twelve (12) weeks before the scheduled date, TL shall not be liable for the Use Fees and direct expenses detailed in Section 4.6 (c) and (d) above. The MCDA will use reasonable efforts to accommodate rescheduling desired by TL.

(f) Notwithstanding the above, if a scheduled use or part of a scheduled use is canceled less than six (6) months before the dates for the scheduled use, and TL replaces the canceled scheduled use or part of the canceled scheduled use with a different production but with the same number of performances during the same time as the canceled scheduled use, then TL shall not be liable for the Use Fees and direct expense incurred by the MCDA pursuant to Section 4.6 (c) and (d). Where the replacement production(s) is of less duration than the canceled scheduled use would have been, TL shall be entitled to offset the user fees generated by the replacement production against any amounts which may become due to the MCDA pursuant to Section 4.6 (c) and (d).

(g) If TL cancels any use, in no case shall MCDA have any liability for such canceled use.

4.7 House Costs. During the run of each presentation, the MCDA will provide TL with weekly invoices detailing all of the charges for the previous week ("House Costs") including rent, stage hands and the like. Within 48 hours after receipt of each such invoice from the MCDA, TL will reimburse MCDA for all undisputed House Costs. In the event TL fails to make payment for undisputed House Costs within 48 hours, or in the event TL fails to pay any disputed House Costs within five (5) business days after notifying MCDA of its dispute (which notice must be given within 48 hours after receipt of the invoice) MCDA will have the right to draw first upon the Base Letter of Credit and second upon the Ticket Advancement Letter of Credit for any shortfalls subject to and in accordance with Section 4.5 above.

4.8 Additional Costs. Presentation costs detailed in each Use Agreement for each production will be deducted from each week's settlement by the MCDA. A current general listing of these costs, which costs are subject to change, is found on Exhibit A of this Agreement. For the purpose of this Agreement, costs required to strip the stage area bare and to subsequently restore the stage area shall be covered by the Use Fees paid pursuant to Section 4.2 above.

V. BOX OFFICE OPERATION

5.1 Advancement of Ticket Receipts. At TL's request, MCDA agrees to transfer to TL on a weekly basis an amount equal to the advance ticket sales receipts for each week then in the MCDA's possession with respect to a specific Use Agreement as calculated pursuant to subsection 5.1(a) below. This weekly transfer by the MCDA to TL is contingent upon TL's first providing the MCDA with a Letter of Credit in an amount equal to the amount of ticket receipts to be advanced (herein the "Ticket Advancement Letter of Credit"). In advancing ticket receipts, the following provisions shall apply:

- (a) The amount to be advanced to TL shall be the full amount of all advance ticket receipts then in the possession of MCDA, less 1) a three percent (3%) charge (inclusive of credit card fees) for all tickets sold through Ticketmaster phone rooms and outlets, 2) a four percent (4%) charge (inclusive of credit card fees) for all tickets sold through the State and/or Orpheum Theatre's box offices, 3) any amounts collected by the MCDA as part of a Restoration Fee, and (4) any ticket service charges charged by the Theatre Box Office and paid by the customer in addition to the ticket price.
- (b) The transfer of all ticket receipts by MCDA to TL shall be made without charge to TL.
- (c) TL covenants that in the event any performance is canceled for any reason and is not rescheduled for a later date within twenty-four (24) hours, then TL will immediately reimburse MCDA for all advanced amounts for canceled performances. In the event TL fails to make the above described reimbursement to MCDA, then MCDA shall have the right to draw upon all or part of the Ticket Advancement Letter of Credit for any shortfall and TL must immediately replenish that Letter of Credit to an amount equal to or greater than the amount of ticket receipts then advanced.
- (d) At no time shall the aggregate amount of ticket receipts advanced to TL for performances that have not yet occurred exceed the total amount of the Ticket Advancement Letter of Credit.
- (e) The MCDA shall not be obligated to advance any ticket receipts subsequent to any uncured Event of Default.

5.2 Weekly Settlement. Settlement for each week of the run will take place after the final performance on each Sunday of the run. MCDA will account to TL for the gross Ticketmaster and State and Orpheum Theatres' box office receipts for the week, less all approved and documented ticketing charges and house costs for that week. All

advances provided by the MCDA to TL pursuant to Section 5.1 will appear as an MCDA credit on that week's settlement. The MCDA and TL acknowledge that the MCDA has a validly executed agreement with Ticketmaster and that both parties shall accept the terms and conditions therein. In the event any terms or conditions of this Agreement conflict with the Ticketmaster Agreement or any successor ticketing agreement entered into by MCDA, the provisions of that ticketing agreement shall control.

5.3 Groups, Subscribers and Member Ticket Sales. Sales for all performances contemplated in this Agreement shall be made exclusively through the Ticketmaster ticket sales software, or such other ticketing system that TL and the MCDA shall mutually agree upon. Subject to all applicable requirements of Ticketmaster, TL shall work solely with the box office staff of the Theatres to sell group, subscriber and member tickets. However, TL may contract with an outside provider for subscription and member tickets sales provided that the Ticketmaster ticketing system (or such other ticketing system as may be utilized by MCDA) is used by such provider..

5.4 Restoration Fee. The MCDA has instituted a fee (the "Restoration Fee") on each ticket sold for any event at the State and Orpheum Theatres in order to finance costs associated with the restoration of the Theatres. The Restoration Fee shall be \$2.00 per ticket sold and the MCDA shall give TL reasonable notice of any increase in the Restoration Fee, if any, during the Term.. Notwithstanding the foregoing, the MCDA may (a) authorize the sale of up to 10,000 tickets per year at \$10.00 per ticket or less with no Restoration Fee, and (b) further authorize the sale of up to 26,000 tickets per year at \$12.00 per ticket or less with a Restoration Fee of less than \$2.00 per ticket but not less than \$1.00 per ticket. "Year," for purposes hereof, means November 1 of each year to October 31 of the following year. The Restoration Fee is a surcharge over and above the established price of a ticket, and is applied uniformly to all ticketed events occurring at either of the Theatres by whomever presented. The Restoration Fee applies to Member, Group and Subscription sales as well as over-the-counter sales.

5.5 TL Member, Group and Subscription Sales- Cooperation with Respect to Canceled Performances. In the event any performance is canceled for any reason, TL shall be solely responsible for reimbursing purchasers for any tickets sold through TL. TL shall indemnify and hold MCDA harmless from and against any claims for refunds of ticket proceeds sold through TL. In addition, TL shall cooperate with the MCDA in reimbursing or otherwise satisfying ticket purchasers in the event a performance is held but the leading star or stars thereof are ill and do not perform.

VI. INSURANCE REQUIREMENTS

6.1 Comprehensive General Liability. TL will procure and maintain during each usage of the State and Orpheum Theatres, Comprehensive General Liability insurance with a minimum limit of liability of \$1,000,000.00 per occurrence, Combined Single Limit (CSL) bodily injury (including personal injury) and property damage

liability, naming the MCDA (Minneapolis Community Development Agency) as an additional insured to such liability insurance policy.

6.2 Workers' Compensation. TL will also procure and maintain Workers' Compensation insurance to State of Minnesota statutory limits, and Employers' Liability insurance with a minimum limit of liability of \$100,000.00 per accident for any and all of TL's employees.

6.3 Evidence of Coverage. Certificates of Insurance evidencing the above required coverages by TL must be provided to the MCDA annually, and each certificate must state that the insurer will provide the MCDA at least 30 days written notice prior to the termination of such policy.

6.4 MCDA Liability for TL Property. Except for its own negligence or willful misconduct, the MCDA will not be responsible for the personal property of TL, its officers, agents, employees, representatives or invitees.

VII. MCDA's MANAGEMENT AND CONTROL; REPRESENTATIONS AND WARRANTIES

7.1 Management and Control. The MCDA's grant to TL of the rights contained in this Agreement does not relinquish the MCDA's right to control and manage the State and Orpheum Theatres. The MCDA may, for example, set reasonable requirements in consultation with TL for police, first aid, and security in order to protect the public safety and prevent damage to the Theatres.

7.2 Representation and Warranties. The MCDA represents and warrants as follows:

(a) The Theatres will be furnished, heated and/or air-conditioned, cleaned and in good and safe order and repair, inside and out, with all available dressing rooms and support space and all equipment including, but not limited to, machinery, pipes, plumbing, wiring, gas and electric fittings, permanent and temporary seats and seating arrangements, and all other equipment. The facilities shall be managed and maintained in a first-class, professional manner, and will comply with the Americans with Disabilities Act and Equity minimum standards.

(b) The Theatres shall be furnished with the stage area as a bare stage, open four-wall with all rigging linesets empty and available for use (excluding house teaser and house curtain). It is understood that all in-house masking curtains, scenic curtains, drops, scrims, movie screens, and lighting electrics are removed from the linesets, as well as any platforms.

pianos, or other equipment removed from the stage and house lighting positions prior to the advance production call/load in.

(c) The Theatres shall include, as part of the rental, a marquee, exterior lighting, existing front-of-house theatrical lighting positions (not including follow spots), rigging spot sheaves and lines (minimum of 40), music stands and orchestra chairs and use of any existing overhead sound loudspeaker cluster, delay system, under-balcony speakers and intercom equipment.

(d) The Theatres shall be furnished with two (2) washers and dryers for primary use by the wardrobe department as part of the rental.

(e) The Theatres shall be furnished with a house manager and box office manager as part of the rental. The Theatres shall also be furnished with such personnel as may be required by its contract with IATSE Local 13 to be billed in addition to the rent.

(f) The Theatres shall be furnished with gas, electric power, water and sewer services.

(g) The Theatres shall be maintained at temperature ranges in the premises at no lower than 68 degrees Fahrenheit and no greater than 80 degrees Fahrenheit. MCDA and TL agree that 74 degrees Fahrenheit is the ideal temperature and MCDA agrees to use its best efforts to maintain the 74 degrees Fahrenheit temperature.

(h) The MCDA shall promptly remove and dispose of all rubbish, trash and garbage prior to scheduled TL use, and shall keep the Theatres' grounds and adjacent sidewalks clean and in good condition.

(i) The MCDA shall make such renewals and replacements of equipment, including permanent seats and seating arrangements, as may be necessary so that at all times the Theatres and all equipment incident thereto shall be in thoroughly good order, condition and repair.

(j) The MCDA shall maintain the number of permanent seats available in the State Theatre at a minimum of 2,100 and the Orpheum Theatre at a minimum of 2550 seats.

VIII. THEATRE LIVE'S RESPONSIBILITY FOR THEATRES

8.1 TL's Responsibility for Theatres. TL will vacate the State and Orpheum Theatres after each presentation, leaving them in as good a state and condition as each was at the commencement of TL's usage. TL agrees that if damage to either of

the Theatres occurs due to the act of negligence of TL, its officers, agents, employees, guests, invitees or patrons, TL will, on demand, repair such damage in a manner approved by the MCDA. In the event that TL fails to repair such damage in a timely manner, the MCDA may effect the necessary repairs and TL will, on demand, reimburse the MCDA for such costs. TL will use its best efforts to ensure that all sets, props, and costumes brought into either of the Theatres are well-constructed and flameproofed.

IX. THEATRE EDUCATION INITIATIVE AND CAPITAL IMPROVEMENT FUND

9.1 TL's Commitment to Contribute to Theatre Education Initiative and Capital Improvement Account. TL will devote all of the net income it realizes from the presentation of the Broadway Subscription Season or Seasons to a Theatre Education Initiative to be set up by TL, and to a Capital Improvement Account to be set up under the control and direction of the MCDA. Fifty percent (50%) of TL's net Broadway related income will be devoted to the Theatre Education Fund, and fifty percent (50%) will be devoted to the Capital Improvement Account. TL's annual contribution to the Capital Improvement Account will be a minimum of \$75,000 and its annual budget for its Theatre Education Initiative will be a minimum of \$75,000. The annual contribution to the Capital Improvement Account shall be paid in by TL on an annual basis within sixty days after the end of each Season.

9.2 Theatre Education Initiative. TL shall set up, fund, and administer a Theatre Education Initiative devoted to the development of future audiences for Broadway and other live performing arts and to providing theatre and concert experiences to currently underserved populations. TL shall fund this endeavor per Section 9.1 of this Agreement.

All moneys dedicated to the Education Initiative shall be segregated by TL in a separate account, and said account shall be subject to an annual audit by an auditor acceptable to the MCDA. In addition, TL shall brief the MCDA on a monthly basis on its theatre education activities and shall prepare and submit to the MCDA an annual report on the results of the Education Initiative.

9.3 Capital Improvement Account. TL shall contribute to the funding of a Capital Improvement Account in accordance with the terms of Section 9.1 of this Agreement.

X. INDEMNIFICATION

10.1 Indemnification. TL agrees to defend, hold harmless, and indemnify the MCDA, its officers, employees and agents, against all claims for loss or damage to property or injury or death to persons not covered by insurance proceeds and arising from, connected with or occasioned by TL's use or occupancy of either of the Theatres.

unless such claims for loss, damage, injury or death result from the sole negligence or willful misconduct of the MCDA, its officers, employees or agents. The MCDA agrees to defend, hold harmless, and indemnify TL, its officers, employees and agents, against all claims for loss or damage to property or injury or death to persons not covered by insurance proceeds and arising from, connected with or occasioned by the MCDA's management of the Theatres, or negligence or willful misconduct on behalf of the MCDA, its officers, employees and agents in operating the Theatres.

10.2 Liability for Fees and Taxes. TL agrees to be responsible for the payment of any and all admission taxes which may be levied against the entertainment or activity being presented by TL at the Theatres and to indemnify the MCDA within ten (10) days of demand against any costs and claims made against the MCDA for the payment of any of these taxes. In the event TL fails to indemnify the MCDA within such ten (10) day period, the MCDA shall be entitled to draw upon either the Base or Ticket Advancement Letters of Credit to the extent of any such costs or claims.

10.3 Liability for Cancellations. TL agrees to defend and hold the MCDA harmless from any claims of whatever nature not covered by insurance and arising from TL's failure to present as scheduled the presentations contemplated by this Agreement. The MCDA agrees to defend and hold TL harmless from claims of whatever nature not covered by insurance proceeds and arising from the MCDA's failure to make the Theatres available in accordance with this Agreement, except to the extent such failure is due to an event set forth in Section 11.1 below.

XI. UNFORESEEABLE EVENTS

11.1 Unforeseeable Events. The MCDA and TL shall not be liable to the other for damages or fees, including, without limitation, those set forth in Section 4.2, for postponement, cancellation or interruption of a use beyond the party's control due to regulation of constituted authority, labor disputes, burning or destruction of the place of use, Act of God, disaster, or other event of "force majeure." The MCDA and TL shall continue to be bound by this Agreement with respect to all items of this Agreement not materially affected by such events. If by reason of such events, performance by MCDA or TL of its obligations under this Agreement is rendered impossible in whole or in substantial part, then upon either party giving written notice to the other thereof, both parties shall be excused from further performance of this Agreement during the time and to the extent that performance is rendered impossible, and any unearned amounts deposited by TL shall be refunded, any additional amounts due MCDA shall be paid by TL, and neither party shall have any further responsibility or liability to the other party for the affected time.

XII. EVENTS OF DEFAULT

12.1 Events of Default. Any one or more of the following events shall constitute a default ("Event of Default") under this Agreement:

(a) If TL shall fail to observe or perform any of the terms, covenants and conditions of this Agreement (including the obligation to present at least eighty (80) individual performances during each Season pursuant to Sections 2.1 and 2.2 of this Agreement), and such failure shall continue for ten (10) days after written notice has been given to TL by the MCDA specifying such default and requesting that it be remedied; unless the MCDA shall agree in writing prior to the expiration of such time to an extension for such longer period as may be reasonably necessary to remedy the same; or unless such default cannot be reasonably cured within ten (10) days and TL proceeds to diligently remedy the same;

(b) If TL shall file a Petition in Bankruptcy or for reorganization or for an arrangement pursuant to any present or future Federal Bankruptcy Act or under any similar federal or state law; or shall be adjudicated bankrupt or insolvent; or shall make an assignment for the benefit of its creditors; or shall admit in writing its inability to pay its debts as generally they become due; or if a petition or answer proposing the adjudication of TL as bankrupt or its reorganization under any present or future Federal Bankruptcy Act, or any similar federal or state law, shall be filed in any court and such petition or answer shall not be discharged or denied within 60 days after filing thereof; or a receiver, trustee or liquidation of TL or of all or of substantially all of the assets of TL shall be appointed in any proceeding brought against TL and shall not be discharged within 30 days after such appointment; or if TL shall consent to or acquiesce in such appointment; or TL shall be dissolved or liquidated; or

(c) If the MCDA shall fail to observe or perform any of the terms, covenants and conditions of this Agreement and such failure shall continue for ten (10) days after written notice has been given to the MCDA by TL specifying such default and requesting that it be remedied; unless TL shall agree in writing prior to the expiration of such time to an extension for such longer period as may be reasonably necessary to remedy such default and the MCDA proceeds to diligently remedy the same; or unless such default cannot be reasonably cured within ten (10) days and the MCDA proceeds to diligently remedy the same.

12.2 Remedies. Whenever any Event of Default referred to in Section 12.1(a) or (b) hereof shall have happened and be subsisting, any one or more of the following remedial steps may be taken by the MCDA:

(a) The MCDA may, upon written notice to TL, immediately terminate this Agreement, revoke the privileges granted herein, exclude TL from occupying and using the Theatres, recover any amounts advanced to TL and recover from TL damages incurred; or

(b) The MCDA may take whatever action at law or in equity may appear necessary or appropriate to protect its interests in the Theatres or in this Agreement, or to enforce the performance and observance of any obligation, agreement or covenant of TL under this Agreement, including drawing on the Base and/or Ticket Advancement Letters of Credit in accordance with and subject to Section 4.5 hereof and an action for recovery of damages.

Whenever any event of default referred to in Section 12.1(c) hereof shall have happened and be subsisting, TL may take whatever action at law or in equity may appear necessary or appropriate to protect its interests in this Agreement, or to enforce the performance and observance of any obligation, agreement or covenant of the MCDA under this Agreement, including an action for recovery of damages.

12.3 Manner of Exercise. No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or not or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

12.4 Attorneys Fees and Expenses. In the event either party should default under any of the provisions of this Agreement and the other party shall incur legal, accounting or other expenses in a judicial or arbitration proceeding seeking enforcement of this Agreement, the prevailing party shall be entitled to recover from the other party the reasonable fees of such attorneys, accountants or other such expenses so incurred.

XIII GENERAL PROVISIONS

13.1 Food and Merchandise. The MCDA reserves to itself the right to sell food, beverages, novelties, programs and other merchandise in connection with TL's uses of the State and Orpheum Theatres. TL may contract with the MCDA to permit TL to sell merchandise in the Theatre lobbies. The MCDA, through its Theatre Manager, will negotiate the fees to be paid to the MCDA for merchandise sold at the Theatres as

provided by the provisions of the standard Use Agreement entered into for each TL presented production.

13.2 Theatres Smoke Free. The State and Orpheum Theatres have been designated "Smoke Free" in their entirety. TL agrees to use its best efforts to comply with that designation.

13.3 Licensed and Insured Caterers and Security. TL agrees to employ only fully-licensed and insured caterers and security personnel in all areas of both the State and the Orpheum Theatres.

13.4 Acknowledgment of Theatre Ownership. TL agrees that it shall cause an acknowledgment of the MCDA's ownership of the Theatres to be printed in each program used for performances presented at the Theatres pursuant to this Agreement.

13.5 Stage Security. TL agrees to ensure that no one other than performers and TL's organizational staff will be present on the stage or stage wings before, during, or after the TL's performances.

13.6 Videotape or Broadcast. TL agrees not to cause any performance to be televised, broadcast, or recorded for further broadcast without the prior written consent of the MCDA, provided that promotional taping of no more than 30 minutes may be allowed with respect to each production so long as no more than 3 minutes of such tape is aired. The MCDA may not tape any production presented hereunder without TL's prior consent. The parties agree to comply with the terms of all applicable union agreements in connection with such taping.

13.7 MCDA Box Office Lien. TL agrees that the MCDA shall have a lien on all box office receipts, subject to the rights of TL hereunder, which lien shall be prior to any claim to such proceeds that may be brought by any third party. TL further agrees to notify any third party with whom it is dealing in connection with either of the Theatres of the priority of the MCDA's lien. TL agrees to execute such documents, including financing statements, as the MCDA may reasonably request in order to establish the priority of such lien.

13.8 Assignment. TL will not assign this Agreement or any right hereunder without the prior written consent of the MCDA. The MCDA will not assign this Agreement or any right hereunder, except to a governmental entity, without prior written consent of TL.

13.9 Severability. If any provision of this Agreement or its application to any person or circumstances shall be invalid or unenforceable, the remaining provisions of this Agreement will not be affected by such invalidity or unenforceability.

13.10 Time of Essence. Time will be considered of the essence in interpreting all provisions of this Agreement.

13.11 Amendment of Agreement. No term, provision or condition of this Agreement may be altered, added or amended except by a written addendum executed by both parties and attached hereto.

13.12 Notices. All notices required under this Agreement will be in writing, and will be deemed to have been given if either delivered personally or mailed by certified or registered mail to:

With respect to Theatre Live!

Theatre Live!
36 South Ninth Street
Minneapolis, MN 55402
Attention: Mr. Fred Krohn

With a copy to:

Juamcyn Productions Company, LLC
12 South Sixth Street, Suite 720
Minneapolis, Minnesota 55402
Attention: Mr. Mike Brand

With respect to the MCDA:

Theatre Manager
State and Orpheum Theatres
805 Hennepin Avenue
Minneapolis, Minnesota 55402

With a copy to:

Ms. Jane Lerdall, Project Manager
Minneapolis Community Development Agency
Crown Roller Mill, Suite 600
105 Fifth Avenue South
Minneapolis, Minnesota 55401

And a copy to:

Legal Department
Minneapolis Community Development Agency

Crown Roller Mill, Suite 200
105 Fifth Avenue
Minneapolis, Minnesota 55401
Attention: Mr. Gary Winter

13.14 Governing Law. This Agreement shall be governed by the laws of the State of Minnesota.

13.15 Tax-Exempt Status of Bonds. TL acknowledges that it has been informed that a portion of the Orpheum Theatre has been financed through bonds issued by the MCDA, the interest on which is exempt from federal income taxation. TL agrees to take no action which would adversely affect the tax-exempt status of such bonds or any other bonds of the MCDA issued or hereafter issued to finance all or any part of the Theatres upon notice from the MCDA. Notwithstanding the foregoing, TL makes no representation as to the tax-exempt status of any such bonds.

13.16 No Tenancy. Nothing in this Agreement shall be construed as creating a tenancy between the MCDA and TL, or as making the MCDA and TL partners or joint venturers.

13.17 Arbitration. Any dispute arising out of or relating to the determination as to whether a production constitutes "Broadway Theatre" under Section 3.2 of this Agreement shall be finally settled by arbitration conducted expeditiously in accordance with the American Arbitration Association Commercial Arbitration Rules by three independent and impartial arbitrators, of whom each party shall appoint one and the third shall be appointed by the two party selected arbitrators. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C., Sections 1-16, and judgment upon the award rendered by the Arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Minneapolis, Minnesota.

13.18 Binding Effect. This Agreement is binding upon the parties hereto and any permitted successors and assigns.

13.19 Survival of Terms. Any term or condition of this Agreement which by context may need to be enforced or applied after a termination or cancellation of this Agreement shall survive such cancellation or termination.

13.20 Consultation by Jujamcyn Productions Company. The parties hereto acknowledge and agree that TL's presentation of a Broadway Subscription Series at the Theatres shall be made in consultation with Jujamcyn Productions Company ("Jujamcyn") pursuant to a written agreement (the "Professional Management Services Agreement"). TL agrees that the Professional Management Services Agreement shall provide (a) that its term shall end no sooner than the last day of the Third Season or any

extension Season unless terminated earlier as provided in Section 2.2, (b) that Jujamcyn will review and approve as to form and content, any and all individual contracts for presentations at the Theatres, and (c) that TL and Jujamcyn will jointly agree on show selection and venue for Broadway Theatre. TL represents that the agreement attached hereto as "Exhibit B" is a true, correct and complete copy of all agreements between TL and Jujamcyn relating to presentation of Broadway Theatre at the Theatres. TL shall provide MCDA with copies of any and all amendments relating to the Professional Management Services Agreement. At any time that such management relationship between TL and Jujamcyn on the foregoing terms discontinues for any reason, or should TL fail to permit Jujamcyn to fulfill its obligations under clauses (b) and (c) above, MCDA may terminate this Agreement, provided however, in the event the management relationship between TL and Jujamcyn discontinues, TL may propose to MCDA for its consideration a replacement management services provider. Because the MCDA must be mindful of both theatre marketing and preserving the tax-exempt status of the Bonds, the MCDA shall have the right to approve or disapprove the proposed replacement management services provider in its sole discretion. This Section does not limit MCDA's right to terminate this Agreement pursuant to any other provision hereof.

THIS AGREEMENT is executed by the parties as of the date first above written.

THEATRE LIVE!, Inc.

By: [Signature]
Its: Chair and CEO

**MINNEAPOLIS COMMUNITY
DEVELOPMENT AGENCY**

By: [Signature]
Its: Deputy Executive Director

APPROVED AS TO FORM

[Signature]

MUA: 3-11-98